

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Jun 17, 2022

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

v.

MARCELO ANTHONY BENSON,

Defendant.

No. 1:22-cr-02043-SMJ-1

CASE MANAGEMENT ORDER

The Court now enters the following Case Management Order, which sets forth the hearings and requirements the parties will observe in this matter. To the extent this Order conflicts with any previously entered Orders in this matter, this Order shall govern. All counsel are expected to carefully read and abide by this Order. The Court will grant relief from the requirements in this Order only upon motion and good cause shown.

IT IS HEREBY ORDERED:

- 1. Local Criminal Rules.** Counsel shall comply with the Eastern District of Washington Local Criminal Rules of Procedure (LCrR), except where specifically modified below or by subsequent Order.
- 2. Emailing the Court.** Where this Order requires counsel to email documents to the Court, all documents shall be attached to the email

1 in Microsoft Word (.doc/.docx) or rich-text (.rtf) format. The subject
2 line of each email shall be formatted as follows:

3 **[Case No.]; [Case Name]; [Title of Document]**

4 (e.g.: *13-cr-9999-SMJ; USA v. Doe; Trial Brief*)

5 **3. Discovery**

6 **A.** All discovery documents must be Bates-stamped with a unique
7 identifier and must be produced digitally in a text-searchable
8 format. The Court will grant relief from this requirement only in
9 exceptional circumstances, upon motion and good cause shown.

10 **B.** Production of discovery shall be governed by Local Criminal
11 Rule 16. *See* LCrR 16.

12 **C.** The Court presumes a request for discovery and disclosure
13 under Federal Rules of Evidence 404(b), 608(b), and 609, *Brady*
14 *v. Maryland*, 373 U.S. 83 (1963), *Giglio v. United States*, 405
15 U.S. 150 (1972), *United States v. Henthorn*, 931 F.2d 29 (9th
16 Cir. 1991), and their progeny, and as such these items are
17 ordered disclosed by the deadline set forth in Local Criminal
18 Rule 16.

19 **D.** At arraignment or within 14 days thereafter, the Government is
20 required to disclose evidence relating to Defendant's guilt or

1 punishment that might reasonably be considered favorable to the
2 Defendant. *See* LCrR 16(a)(6); *see also Brady*, 373 U.S. 83;
3 *United States v. Agurs*, 427 U.S. 97 (1976); Fed. R. Crim. P.
4 5(f).¹ This is a continuing duty for newly discovered evidence.
5 LCrR 16(c); *see also* [ECF Nos. 18,21]

6 **E.** Pursuant to Federal Rule of Criminal Procedure 16(d)(2), the
7 consequences for violating either this Court's Standing
8 Disclosure Order, ECF No. 21 or the Government's obligations
9 under *Brady* include, but are not limited to, the following:
10 contempt, sanction, referral to a disciplinary authority, adverse
11 jury instruction, exclusion of evidence, and dismissal of
12 charges.

13 **4. Expert-Witness Summaries**

14 **A.** When each party produces to opposing counsel summaries of its
15 expert-witness testimony for which disclosure is required under
16 Federal Rule of Criminal Procedure 16 and Local Criminal Rule
17 16, counsel shall also email an electronic copy of the summary
18 to the Court at MendozaOrders@waed.uscourts.gov.

20 ¹ Nothing in this requirement enlarges or diminishes the Government's obligation to disclose information and evidence to the Defendant under *Brady* and its progeny.

1 **B.** All summaries of expert witness testimony must conform to
2 Federal Rule of Criminal Procedure 16, Local Criminal Rule 16,
3 and applicable case law interpreting those Rules. The Court will
4 not permit an expert witness to testify about opinions which are
5 not explicitly expressed in that expert's summary. *See, e.g.,*
6 *United States v. W.R. Grace*, 526 F.3d 499 (9th Cir. 2008).

7 **5. CM/ECF Technical Assistance.** Parties requiring technical assistance
8 concerning the CM/ECF system, such as the procedures for filing non-
9 scannable exhibits, shall consult the District's "Electronic How To"
10 page (<https://www.waed.uscourts.gov/electronic-how>) or contact the
11 CM/ECF Help Desk by phone at (866) 236-5100 or (509) 458-3410 or
12 by email at ecfinfo@waed.uscourts.gov. Inquiries requesting technical
13 assistance concerning the CM/ECF system shall not be directed to the
14 Judge's chambers.

15 **6. Motions Practice**

16 **A. Generally.** All motions shall either be: a) noted for hearing
17 without oral argument fourteen (14) days after filing, or b) noted
18 for hearing with oral argument at the pretrial conference
19 pursuant to Local Criminal Rule 12(c). Responses and replies
20 to motions must be filed in accordance with Local Criminal Rule

45 and 47, which incorporate the requirements of Local Rule 7.1.

B. Expedited Hearing. Any party seeking an expedited hearing on a time-sensitive matter must comply with Local Criminal Rule 12(c)(3).

C. If a case has more than one defendant, the Court will construe any motion, including motions to continue, as applying to *all* defendants, unless that defendant indicates they do not wish to be joined in the motion. **Defendants thus do not need to file motions to join.**

D. Sealed Documents. Any and all sealed documents (e.g., medical records) shall be filed by the parties under the sealed event as a sealed document. The parties are not required to file a separate motion to seal the documents. The parties shall file any objections to the sealed document(s) by **no later than five days** after the filing of the sealed document(s).

7. Witness Testimony. At any hearing, including trial, in which witness testimony is given, the witness must testify in Court and, absent exceptional circumstances, may not appear by telephone or video conference.

1 **8. Trial Continuances**

2 **A. Motion Deadline.** All motions to continue the trial must be
3 heard before or at the pretrial conference. Any motion to
4 continue trial made after the pretrial conference has
5 occurred will not be granted absent exceptional
6 circumstances.

7 **B. Statement of Reasons.** If the Defendant seeks a continuance, a
8 Speedy Trial Waiver and Statement of Reasons in support of the
9 motion to continue must be filed contemporaneously with the
10 motion.² The Statement of Reasons must (1) be signed by the
11 Defendant, (2) be signed by a certified translator, if applicable,
12 and (3) indicate the latest date upon which Defendant is willing
13 to proceed to trial.

14 **C. Procedure.** Before filing a motion to continue, counsel shall
15 first contact the Courtroom Deputy at (509) 943-8173 to obtain
16 new pretrial conference and trial dates consistent with the length
17 of the requested trial continuance. Thereafter, counsel shall
18 confer with opposing counsel regarding case management

19 _____
20 ² The Court's Speedy Trial Waiver and Statement of Reasons form can be found at
the following link: [http://www.waed.uscourts.gov/sites/default/files/forms/
smj_stmt_reasons_mot_to_cont.pdf](http://www.waed.uscourts.gov/sites/default/files/forms/smj_stmt_reasons_mot_to_cont.pdf).

1 deadlines³ consistent with the new pretrial conference and trial
2 date. **All motions to continue must include proposed case**
3 **management deadlines (either joint or individual) to ensure**
4 **the to-be-imposed deadlines are best suited to this case.**

5 **9. Pretrial Conference**

6 **A.** The Pretrial Conference is **SET for July 27, 2022, at 11:45**
7 **A.M. in YAKIMA.** At this hearing, the Court will hear **ALL**
8 pretrial motions that are noted for oral argument.

9 **B.** All pretrial conferences are scheduled to last no more than
10 **thirty (30) minutes**, with each side allotted **fifteen (15)**
11 **minutes** to present their own motions and resist motions by
12 opposing counsel. If any party anticipates requiring longer than
13 fifteen minutes, that party must notify the Courtroom Deputy at
14 least seven (7) days prior to the hearing. **Any party who fails**
15 **to provide this notice will be limited to fifteen (15) minutes.**

16 **C.** If a motion is to be heard with oral argument, and a party plans
17 to call witnesses or present exhibits, that party must file an
18

19
20 ³ A form with the Court's standard case management deadlines can be found at the following link: <http://www.waed.uscourts.gov/sites/default/files/forms/Proposed%20Case%20Management%20Deadlines.pdf>.

1 exhibit and/or witness list by no later than **seventy-two hours**
2 before the hearing on the motion.

3 **D.** If a party intends to use a laptop, thumb drive, or DVD or CD
4 for presentation of documents, or audio or video recordings, that
5 party must contact the Courtroom Deputy at least **two weeks**
6 prior to the hearing and confirm the compatibility of the
7 technology and equipment.

8 **E.** If a party intends to use a demonstrative exhibit, such as a
9 PowerPoint presentation, it must be submitted to the Court and
10 all opposing parties at least **twenty-four hours** prior to its
11 intended use.

12 **10. Exhibit Lists**

13 **A.** On **August 5, 2022**, after conferring with counsel at the pretrial
14 conference each party shall file a list of exhibits the party intends
15 to introduce at trial. Each party shall also email copies of their
16 exhibit list to the Court at MendozaOrders@waed.uscourts.gov.

17 The parties shall provide their exhibit list in the following
18 format:
19
20

Ex. #	Admitted	Description
1		Photograph of items seized
2		Aerial video surveillance from 1/1/2011. Start Time: 01:03:23 End Time: 01:09:54

Exhibit lists shall include a unique exhibit number and a brief description of the exhibit. For all exhibits consisting of an audio or video file, the exhibit list must designate the precise beginning and ending time indexes of the portion of the file the party intends to use at trial.

B. The USAO shall consecutively number their exhibits from **1 to 999**. In single-defendant cases, Defendant shall consecutively number exhibits from **1000 to 1999**; in multi-defendant cases, Defendants shall consecutively number exhibits from x000 to x999, substituting “x” for each Defendant’s assigned case identifier (e.g. Defendant 3 would number exhibits from 3000 to 3999, etc.). Exhibits shall be pre-marked for identification before trial commences.

11. Witness Lists. On **August 5, 2022**, after conferring with counsel at the pretrial conference, each party shall file and serve a list of witnesses that party intends to call to testify at trial. **The witness list must identify the existence, but need not include the name, of any**

1 **CI the USAO intends to call to testify.** Parties shall email copies of
2 their witness list to the Court at MendozaOrders@waed.uscourts.gov.

3 **12. Trial Briefs, Proposed Jury Instructions and Verdict Form, and**
4 **Requested Voir Dire.** On **August 3, 2022**, after conferring with
5 counsel at the pretrial conference, each party shall file a trial brief,
6 proposed jury instructions and verdict form, and requested voir dire, in
7 accordance with the requirements below. Each party shall email
8 copies to the Court at MendozaOrders@waed.uscourts.gov.

9 **A. Trial Briefs.** Trial briefs shall not exceed twenty (20) pages
10 without prior Court approval, upon motion and good cause
11 shown.

12 **B. Proposed Jury Instructions and Verdict Form.** Jury
13 instructions shall (1) address issues that are unique to the case,
14 and (2) include instructions regarding the elements of each
15 charge or defense. If a Ninth Circuit Model Jury Instruction
16 exists for a particular charge or defense, the parties shall provide
17 the model instruction or shall submit argument as to why the
18 instruction is inadequate or no longer supported by law.
19 Proposed jury instructions shall be accompanied by a proposed
20 verdict form. **The parties must confer to develop joint**

1 **proposed jury instructions and the verdict form.** The Court
2 will only accept an individual party's proposed jury instructions
3 on those points/issues upon which the parties could not agree,
4 and only if the party's memoranda accompanying the
5 individually proposed instruction(s) sets forth the legal authority
6 and justification for why the instruction is necessary.

7 **C. Requested Voir Dire.** The parties may request that the Court
8 include specific questions during the Court's standard voir dire.
9 Requested voir dire shall not duplicate information elicited in
10 the Clerk's Office Jury Questionnaire ("COJQ") and the Court's
11 Criminal Jury Trial Procedures Letter.

12 **13. Exhibit Binders.** On **August 5, 2022**, after conferring with counsel
13 at the pretrial conference, each party must provide to all other parties
14 and to the Court a Bates-stamped copy of all trial exhibits — or, in the
15 case of physical exhibits, a photograph or other reproduction of the
16 exhibit — the party intends to introduce at trial. All trial exhibits shall
17 be organized sequentially by exhibit number in a three-ring binder.

18 **14. JERS.**

19 **A.** The Court utilizes the Jury Evidence Recording System (JERS),
20 a system that makes electronic evidence available in the jury

1 room during deliberations. **Counsel shall promptly consult**
2 **the Court’s “JERS Instructions for Attorneys”⁴ to ensure**
3 **they acquire, retain, and provide evidence to the Court in**
4 **the necessary format.**

5 **B.** On **August 9, 2022**, after conferring with counsel at the pretrial
6 conference, each party who intends to introduce evidence at trial
7 must supply a CD, DVD, or USB drive to the Courtroom Deputy
8 containing all of that party’s exhibits in the required format.
9 Counsel may contact the Courtroom Deputy at (509) 943-8173
10 with any questions.

11 **15. Trial Notices.** On **August 5, 2022**, after conferring with counsel at
12 the pretrial conference, each party shall file a notice that indicates the
13 amount of time requested for opening statement and for voir dire. In
14 addition, defense counsel must indicate if his/her client waives
15 presence at sidebar and jury questions.

16 **16. Technology Readiness Meeting.** On **August 9, 2022**, any party
17 seeking to offer video or audio evidence at trial must meet with Court
18 staff at the location of the trial to verify compatibility with the Court’s

19
20 ⁴ This document can be found on the Court’s public website at the following link:
[http://www.waed.uscourts.gov/content/jers-jury-evidence-recording-system-
information-attorneys](http://www.waed.uscourts.gov/content/jers-jury-evidence-recording-system-information-attorneys).

presentation systems. The parties shall contact the Courtroom Deputy at (509) 943-8173 to arrange this meeting.

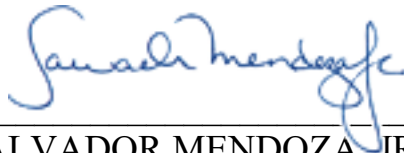
17. Trial. The jury trial is **SET** for **August 15, 2022**, at **9:00 AM** in **YAKIMA**. The **final pretrial conference** will commence at 8:30 AM on the first day of trial.

18. Summary of Deadlines

All pretrial motions, including discovery motions, <i>Daubert</i> motions, and motions <i>in limine</i>, filed	June 29, 2022
PRETRIAL CONFERENCE <i>Deadline for motions to continue trial</i>	July 27, 2022 11:45 AM - YAKIMA
CIs' identities and willingness to be interviewed disclosed to Defendant (if applicable)	August 1, 2022
Grand jury transcripts produced to Defendant Case Agent: CIs: Other Witnesses:	August 1, 2022 August 1, 2022 August 1, 2022
Exhibit lists filed and emailed to the Court	August 5, 2022
Witness lists filed and emailed to the Court	August 5, 2022
Trial briefs, jury instructions, verdict forms, and requested voir dire filed and emailed to the Court	August 3, 2022
Exhibit binders delivered to all parties and to the Court	August 5, 2022
Delivery of JERS-compatible digital evidence files to the Courtroom Deputy	August 9, 2022
Trial notices filed with the Court	August 5, 2022
Technology readiness meeting (in-person)	August 9, 2022
FINAL PRETRIAL CONFERENCE	August 15, 2022 8:30 AM - YAKIMA
JURY TRIAL	August 15, 2022 9:00 AM - YAKIMA

1
2 **IT IS SO ORDERED.** The Clerk's Office is directed to enter this Order and
3 provide copies to all counsel, the U.S. Probation Office, and the U.S. Marshals
4 Service.

5 **DATED** this 17th day June 2022.

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7 

8 SALVADOR MENDOZA, JR.
United States District Judge